NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA07-1269

	Opinion Delivered October 8, 2008
BRIAN GOULD APPELLANT	APPEAL FROM THE INDEPENDENCE COUNTY CIRCUIT COURT,
V.	[NO. DR-2003-440-2]
	HONORABLE TIM WEAVER, JUDGE
MELANIE GOULD APPELLEE	
	AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Brian Gould argues that the trial court erroneously "vacated" a prior judgment for past-due child support, medical bills, and attorney's fees that had been entered against his former wife, appellee Melanie Gould. According to Brian, the trial court's remedy of the parties' dispute was based on an impermissible equitable remedy and in direct contravention to state and federal law. We see no error and affirm.

The genesis of this dispute is the parties' divorce proceeding. When the Goulds dissolved their marriage, custody of their two children was placed jointly, and neither party was required to pay child support. By mutual agreement, the decree provided that each would claim one child for tax purposes. However, in an order filed on August 24, 2006, the trial court ultimately transferred custody of the children to Brian and ordered Melanie to pay $132 per week in child support.

On January 29, 2007, the trial court considered a petition for contempt (filed by Brian) and a motion for reduction in child support (filed by Melanie). The trial court found Melanie to be in willful contempt-of-court for failure to pay child support as previously ordered. The court imposed a thirty-day-incarceration sanction and entered a $6609.60 judgment. The order stated that Melanie had an early-release option. To meet the conditions, she was required to pay Brian the sum of $3500 prior to her release, with the caveat that she pay the balance of the judgment, $3109.60, within ninety days.

After spending fifteen days in jail, Melanie tendered $3500 to Brian. But, she failed to pay Brian the remaining balance within ninety days and made only three child-support payments to Brian from mid-February until May. During this same time period, Brian claimed both children as his dependents (in direct contravention of the divorce decree) for tax purposes in 2006.

On March 13, 2007, Melanie filed a petition for modification, seeking a reduction in the amount of child support she was required to pay Brian. The hearing was held on July 16, 2007. At this hearing, the trial court reduced Melanie's obligation to $76 per week, retroactive to the date her modification petition was filed. At this same hearing, without a formal motion before it, the trial court also considered Melanie's failure to tender the $3109.60 she owed to Brian.

Testimony at the hearing showed that Brian violated the decree by claiming both children as dependents, thereby receiving a financial benefit while depriving Melanie of a $3900 tax refund (which she claimed to be "counting on" to satisfy the remaining balance of the judgment against her). The trial court then, over Brian's objection, ruled that because

Brian had deprived Melanie of the tax-refund money that she was due, "her support is caught up." In its written order, which is the basis for this appeal, the trial court gave "the mother credit for the remaining judgment in the amount of thirty one hundred and nine dollars and sixty cents[,] which represents the full payment of any balance owed under the judgment." The court further noted that "the balance of the thirty day jail time is nullified by the Court's finding that the sixty six hundred dollars and sixty cents is hereby paid in full."

On appeal, Brian's argument in support of reversal is based on a premise that "the court may not set aside, alter, or modify any decree, judgment, or order which has accrued unpaid child support prior to the filing of the motion." Ark. Code Ann. § 9-14-234(c) (Repl. 2008). We agree, and further note that this section has been interpreted to include any existing child-support orders. *See Martin v. Martin*, 79 Ark. App. 309, 87 S.W.3d 817 (2002). However, while we agree with Brian's legal foundation, we take issue with his factual overlay. It is clear from our reading of the record that the trial court did not "modify" the order, instead it found that the debt had been paid by virtue of a "credit" or "offset." Melanie was not relieved of her obligation to pay the arrearage. Instead, the trial court found that she had satisfied her obligation to the court and to Brian once she demonstrated, via unchallenged evidence, that she was denied a $3900 refund that she was legally due. As such, we see no error in the trial court's utilization of an offset theory to resolve this dispute or in its ultimate determination that the remaining portion of the contempt judgment against Melanie had been "paid in full."

Affirmed.

GLOVER and BAKER, JJ., agree.